

[A]  
O P I N I O N  
OF THE  
**HONORABLE ANTONIO NAVARRO.**  
ON THE  
CONTESTED ELECTION IN HARRIS COUNTY  
BETWEEN  
MESSRS BRASHEAR AND McANELLY  
FOR THE SENATE.

~~Not inserted in its proper place in the Journal of Feb. 27th, because not found in time.~~

COMMITTEE ROOM, }  
24th Feb. 1845. }

*To the Senatorial Committee  
On Privileges and Elections:*

I make the following observations, as the basis of the opinion which I have to offer on the contested election between Messrs Brashear and McAnelly, for the Senatorial seat for Harris County.

The county contains thirteen precincts having the right and obligation to vote. Of those No. 3, and No. 7, held no elections. In No. 8 one was held but the returns required by law were not made. Numbers 2, 4, 5, 6, 9, 11, 12 and 13 held elections but in neither of them were the tickets numbered as the law provides. I consider this a gross deficiency of legal requirement, as it destroys the means of identifying illegal votes. The number to be endorsed on the ticket of each voter, is essential for creating testimony in case of contesting an election on the ground referred to. The lack of such enumeration favors the

fraud of illegal voters by confounding their tickets with those which are lawful, since among a considerable number, it would be impossible unless they were so endorsed, to ascertain what identical votes were put in, and what candidates were sustained by persons, who, after they have voted, are proven to have done so without right.

Although the election now referred to is not contested on proof that unqualified persons have voted, the requirement is not less important, as being one which affords the only indispensable means which in ALL elections ought to be provided for purging the polls in case of such abuse; and hence I view its entire omission at any precinct, as inexcusable and sufficient to invalidate the vote of such polls.

In precincts No. 11 and 13, which are among those delinquent in the above respect, other omissions of legal requirements occurred. The election returns from the former instead of being delivered to the Chief Justice by one of the managers under oath, were sent by mail, and in those of the latter no other officers of election appear than two Judges and one clerk, while the laws requires six functionaries including a Presiding officer.

Considering all the above irregularities, especially that which most extensively prevailed, I am of opinion that the two precincts No. 3 and No. 8 in which no elections were held, were less culpable than the nine above mentioned. Whether they omitted to vote from lack of information or from indifference, they by that omission surrendered the expression of their will to the other eleven precincts. Those eleven however by vetting, though informally, expressed their wish to exercise the right of suffrage to which the county was entitled; and if willing to exercise the right they were as fully bound to fulfill the duty of suffrage, by observing all the formalities by law required.

It appears from the investigation which this committee has made on testimony before it, that, in the thirteen precincts of the county five hundred and eighteen votes were returned for the three Senatorial candidates, and that out of that number none save the votes of Precincts No. 1 and No. 10, were rendered according to law. The latter stand thus on the returns:

No. 1.	For Brashear	30,	For McAnelly	36,	For Henderson	18
No. 10.	"	"	6	"	"	3
						1
						36
						39
						19

The total of said legal votes being ninety four. Now had those all been given for one candidate they would still not form a fifth of the votes returned. Had a majority of that aggregate, though consisting of but one more than a moiety, been legal, good reasons might have been urged for basing the Senatorial Representation of the county on the sound part of the vote; but there would be no equity in leaving it to stand upon the suffrage of only two precincts depriving eleven of the means of such representation after they have sought though in a defective manner to possess it.

Therefore if the Seat in dispute were given to the contesting candidate because he has three votes more than the other, out of the legal fraction of the whole number returned, it would as I conceive, be a trespass on the right of suffrage and representation which the Senate has no right to make. As little right has it, however, to sanction illegalities which have already acquired too much impunity, from toleration, and which can never be checked unless an example be made of their results.

Under this view of the case I give my individual opinion to the Senate as a member of the committee, that the only course which can justly be recommended to the Senate is to require a new election. I conceive that by this measure alone can the people of Harris county enjoy a fair Senatorial Representation based on elections held in conformity with law. If they be in consequence for a time deprived of such representation, it must be remembered that the loose manner in which they have exercised their right of suffrage, has imposed on the Senate the labor and loss of time with the consequent expense which an investigation of this kind always involves; and the annulment of their election may serve as an admonition to the people of this State, not to view with indifference nor fulfill without care, a duty so important as the election of their public functionaries.

NAVARRO.